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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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AUG 27 2013

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IN THE MATTER OF ARIZONA PUBLIC  
SERVICE COMPANY REQUEST FOR  
APPROVAL OF UPDATED GREEN POWER  
RATE SCHEDULE GPS-1, GPS-2, AND GPS-3.

DOCKET NO. E-01345A-10-0394

IN THE MATTER OF THE APPLICATION OF  
ARIZONA PUBLIC SERVICE COMPANY FOR  
APPROVAL OF ITS 2013 RENEWABLE  
ENERGY STANDARD IMPLEMENTATION  
FOR RESET OF RENEWABLE ENERGY  
ADJUSTOR.

DOCKET NO. E-01345A-12-0290

IN THE MATTER OF THE APPLICATION OF  
TUCSON ELECTRIC POWER COMPANY FOR  
APPROVAL OF ITS 2013 RENEWABLE  
ENERGY STANDARD IMPLEMENTATION  
PLAN AND  
DISTRIBUTED ENERGY ADMINISTRATIVE  
PLAN AND REQUEST FOR RESET OF ITS  
RENEWABLE ENERGY ADJUSTOR.

DOCKET NO. E-01933A-12-0296

IN THE MATTER OF THE APPLICATION OF  
UNS ELECTRIC, INC. FOR APPROVAL OF ITS  
2013 RENEWABLE ENERGY STANDARD  
IMPLEMENTATION PLAN AND DISTRIBUTED  
ENERGY ADMINISTRATIVE PLAN AND  
REQUEST FOR RESET OF ITS RENEWABLE  
ENERGY ADJUSTOR.

DOCKET NO. E-04204A-12-0297

**OPENING BRIEF**

Kevin Koch hereby files his opening brief in the above captioned matter. This brief will address the "Track and Record" proposals and the various other alternatives brought up in testimony and at the hearing.

## **INTRODUCTION**

As part of its 2013 RES plan, Arizona Public Service (“APS”) requested that it use a method of “track and record” to ensure compliance with the RES rules as it relates to the Distributed Renewable Energy (“DE”) requirement. In Decision # 73636, The Arizona Corporation Commission (“ACC”) directed the Hearing Division to “hold a hearing and prepare a Recommended Opinion and Order (“ROO”) for Commission consideration on the Track and Record Proposal and potential alternatives.”<sup>1</sup> In a procedural order dated February 15, 2013, the ALJ consolidated dockets of APS, Tucson Electric Power (“TEP”) and UNS Electric (“UNS”) (Collectively the “Utilities”) and set a hearing for Track and Record. The hearings were held in June of 2013 at the Commission’s office in Phoenix. Kevin Koch, a longtime advocate of solar energy in Southern Arizona, participated through counsel at the hearings.

## **SUMMARY OF POSITION**

It was established through pre-filed testimony and testimony at the hearing that there are potentially several ways for the Utilities to meet the RES rules requirement, specifically the DE carve out, without going through the process of changing the RES rules. It is in the best interest of the Utilities as well as other stakeholders, including Mr. Koch, to have certainty in how the RES rules will be implemented. A rule making provides the least amount of certainty and potentially is the most time consuming and lengthy of all options presented. While there was extensive discussion on what constitutes as double counting of Renewable Energy Credits,

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<sup>1</sup> Decision No 73636 page 6 lines 8-11. The Commission came to the same result in Decision No. 73637 for Tucson Electric Power and in Decision No 73638 for UNS Electric.

1 Mr. Koch will not take a position on that issue at this time but will reserve the right to do so in  
2 the reply brief if needed.

3 **OPENING OF THE RES RULES**

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5 It has been APS' position since they first filed testimony in this matter that the RES rules must  
6 be amended.<sup>2</sup> APS contends there will be, at some point in the future, a time when incentives  
7 are no longer needed for DE solar.<sup>3</sup> While APS has recommended that the REST rules be  
8 changed to eliminate the DE carve out<sup>4</sup>, the company's witness was not familiar with the  
9 process of a rule making at the ACC.<sup>5</sup> Additionally, APS has not even suggested proposed rule  
10 changes.<sup>6</sup> APS' simplistic approach of advocating for a rule change does not take into account  
11 the resources of the Commission or of the interested parties that would be necessary to change  
12 the RES rules.

13 As shown through TEP's witness, Mr. Tilghman, rulemakings at the ACC can be a long  
14 cumbersome process that may not accomplish what APS was first advocating for.<sup>7</sup> Mr.  
15 Tilghman testified that the original rulemaking for the Renewable Energy Standards lasted for  
16 2 ½ years.<sup>8</sup> He went on further to discuss how the resources required for a rulemaking are  
17 more extensive than other options that were put forth, even one option raised by TEP.<sup>9</sup>

18 The proposal put forth by APS doesn't take into account that other utilities are not in  
19 the same position as APS as it relates to DE compliance. Bob Gray, testifying on behalf of  
20 Staff, stated that "some utilities are not ahead or very far ahead" of DE compliance targets.<sup>10</sup>

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<sup>2</sup> Ex. APS-1 at 3, 6-7.

22 <sup>3</sup> Id. At 2, 11-12.

23 <sup>4</sup> Id. At 6, 25-26.

24 <sup>5</sup> TR Vol 1 at 63- 64, 25 -1.

25 <sup>6</sup> Id. at 62, 22-25.

26 <sup>7</sup> TR Vol 1 at 172 – 173.

<sup>8</sup> Id. at 173, 10-12.

<sup>9</sup> Id. at 16-25.

<sup>10</sup> TR. Vol. IV at 693, 20-22.

1 While APS contends it is so far ahead of the DE compliance, clearly other utilities are not.  
2 Changing the RES rules because APS has determined that they are in compliance does not  
3 comport with the stated intent of the RES rules nor is it in the public interest.

4 Opening up the rules to address an issue that can be as easily addressed without a rule  
5 change is not an effective use of Commission and other interested parties resources or time.  
6 APS' need for certainty in complying with the RES Rules can be accomplished in a variety of  
7 manners that do not require a rulemaking.

#### 8 **OTHER PROPOSALS THAT DO NOT REQUIRE A RULEMAKING**


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10 There have been several parties, including Staff, RUCO and TEP who raised alternative  
11 solutions that do not require a rule change.<sup>11</sup> While this brief will not attempt to pick which  
12 one of these alternatives should be adopted by the Commission, Mr. Koch would support a  
13 method of allowing the Utilities to achieve compliance that does not require a rulemaking and  
14 reserves the right to address the other parties alternatives' in his reply brief.

#### 15 **CONCLUSION**

16 As has been demonstrated above, there are several alternatives that are in the record of  
17 this proceeding that do not require any changes to the existing RES rules. Adopting APS'  
18 proposal of eliminating the DE carve out would not be in the public interest due to the reasons  
19 discussed above including resources of the parties, the issue not applying to all utilities that fall  
20 under the RES rule and other policy decisions.

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26 <sup>11</sup> See Eg TEP -1 at 5, 13-15;

1  
2 RESPECTFULLY SUBMITTED this 27th day of August, 2013.  
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6   
7 Garry D. Hays, Esq.  
8 Law Offices of Garry D. Hays, PC  
9 1702 E Highland Ave. Suite 204  
10 Phoenix, AZ. 85016  
11 (602)-308-0579  
12 ghays@lawgdh.com  
13 Counsel for Kevin Koch  
14

15 Original and thirteen (13)  
16 copies filed on August 27th, 2013, with:

17 Docket Control  
18 Arizona Corporation Commission  
19 1200 West Washington Street  
20 Phoenix, AZ 85007

21 COPIES of the foregoing mailed/  
22 delivered on May 28, 2013, to:

23 Janice Alward, Chief Counsel  
24 Legal Division  
25 ARIZONA CORPORATION COMMISSION  
26 1200 West Washington Street  
Phoenix, Arizona 85007

Steven M. Olea, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

1 Lyn Farmer  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
2 Phoenix, Arizona 85007

3  
4 Thomas A. Loquvam  
PINNACLE WEST CAPITAL  
5 CORPORATION  
400 N. 5<sup>th</sup> St., MS 8695  
6 Phoenix, AZ 85004

7 Michael W. Patten, Esq.  
ROSHKA DEWULF & PATTEN PLC  
8 One Arizona Center  
400 East Van Buren Street, Suite 800  
9 Phoenix, Arizona 85004  
Attorneys for Tucson Electric Power and UNS  
10 Electric, Inc.

11 Karen White  
U.S. Air Force Utility Law Field Support  
12 Center  
13 139 Barnes Dr.  
Tyndall AFB, Florida 32403

14 C. Webb Crockett  
Patrick J. Black  
15 FENNEMORE CRAIG  
2394 E. Camelback Rd., Suite 600  
16 Phoenix, AZ 85016  
Attorneys for Freeport-McMoRan & AECC  
17

18 Court S. Rich  
ROSE LAW GROUP, PC  
6613 N. Scottsdale Rd., Suite 200  
19 Scottsdale, AZ 85250  
Attorneys for SEIA  
20

21 Timothy Hogan  
ARIZONA CENTER FOR LAW IN PUBLIC  
INTEREST  
22 202 E. McDowell Rd., Suite 153  
Phoenix, AZ 85004  
23 Attorneys for WRA and the Vote Solar  
Initiative  
24

25 Christopher D. Thomas  
Fred E. Breedlove III  
26 SQUIRE SANDERS

1 E. Washington, 27<sup>th</sup> Floor  
Phoenix, AZ 85004  
Attorneys for Sonoran Solar, LLC

Michael L. Neary, Executive Director  
AriSEIA  
111 West Renee Dr.  
Phoenix, AZ 85207

Douglas V. Fant  
LAW OFFICES OF DOUGLAS V. FANT  
3655 W. Anthem Way, Suite A-109, PMB 411  
Anthem, AZ 85086  
Attorney for Interwest Energy Alliance

Daniel Pozefsky  
RUCO  
1110 W. Washington St., Suite 220  
Phoenix, AZ 85007

Craig A. Marks  
CRAIG A. MARKS, PLC  
10645 N. Tatum Blvd., Suite 200-676  
Phoenix, AZ 85028  
Attorney for NRG Solar

Scott Wakerfield  
201 N. Central Ave. Suite 3300  
Phoenix, AZ 85004-1052

Arizona Reporting Service, Inc.  
2200 N. Central Ave. Suite 502  
Phoenix, AZ 85004-1481

Kevin Koch  
612 N. Seventh Ave.  
Tucson, AZ 85705

By: 